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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.R.P.(MD).No.740 of 2005
and
C.M.P.(MD).No.4540 of 2005

The Managing Director
Tamil Nadu State Transport
Corporation
Tirunelveli
(Formerly Kattabomman Transport
Corporation Limited) : Petitioner

Vs.

1.S.Like Ali
(Substituted as per order dated
03.01.2008 in M.P.No.1 of 2007)

2.The Tamil Nadu Wakf Board,
Chennai.600 004. : Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the judgment and decree dated 29.07.2004 passed in O.S.No.27 of 2003 by the learned Principal Subordinate Judge, (Wakf Tribunal), Tirunelveli.

For Petitioner :Mr.D.Sivaraman

For R1 :Mr.D.Nallathambi

For R2 :No appearance

O R D E R

This civil revision petition is directed against the order, dated 29.07.2004 passed in O.S.No.27 of 2003 by the learned Principal Subordinate Judge, (Wakf Tribunal), Tirunelveli.

2.The petitioner is the first defendant and the first respondent is plaintiff in the suit in O.S.No.27 of 2003 and the first respondent/plaintiff has filed a suit for recovery of possession and the respondents did not seek any declaration to title of the suit schedule property.

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3.The learned counsel for the petitioner, who is the first defendant in the suit contended that the trial Court without failed to consider the plaintiff is having title over the suit property, based on any materials or documents from the revenue authorities and the lower Court has also failed to consider that the plaintiff is not the owner of the property, but he approached the Court claiming himself as a owner of the property. The plaintiff ought to have filed a suit for declaration of title to the suit property, but they cannot entitle to sought for the relief of recovery of possession from the defendant. The lower Court ought to have dismissed the suit on the ground of non-joinder of necessary parties and the present plaintiff has no right to get recovery of possession of the property, since the property was classified only as a "Grama natham". Further, the lower Court failed to consider that both the plaintiff and the second defendant claimed that that the suit property was declared by the second defendants as Wakf Property as early as in the year 1955 and the Trial Court instead of dismissing the suit,had erroneously decreed the suit as prayed for in the plaint. The lower Court also erred in awarding time limit to hand over possession of the suit property, . to the present plaintiff. Hence, the civil revision petition has to be allowed and the order of the trial Court has to be set aside.

4.Per contra, the learned counsel for the respondent would contend that the trial Court after going through the entire evidence and materials produced before the trial Court, came to a conclusion that the suit property belonging to the plaintiff and the present revision petitioner is first defendant who is a tenant is liable to be evicted from the suit property. The lower Court after carefully charged against the respondent, since the revision petitioner/tenant under the first plaintiff is liable to be evicted and the order of the trial Court, there is no infirmity or illegality of the judgment passed by the trial Court, which warrants interference by this Court, Hence, the civil revision petition is liable to be dismissed.

5.It is admitted on either side, the defendant/revision petitioner in the written statement filed by them in the trial Court which reads as follows:

> *"The first defendant submits that they took lease of the plaint schedule land in survey No.240/1 measuring 1.25 Acres, out of 20.40 Acres in Tisayanvillai Village for a period of ten years, lease agreement was entered between the fist defendant and the plaintiff on 22.02.1993 w.e.f.01.02.1993 and the tenancy expires on 31.01.2003."*

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6.Further a reading of the plaint, it was specifically mentioned as schedule property is a grama natham. Hence, the suit

filed by the plaintiff to recover the suit property from the above said para mentioned in the statement and in the plaint the present suit filed for recover the property, which was leased to the first defendant by the plaintiff. It is clearly admitted that the first defendant entered in the suit property in pursuant of the lease agreement with the plaintiff herein. Hence, the plaintiff/first defendant has admitted that the title of the plaintiff had entered into a lease agreement for 20 years and enjoying the suit property as a lessee. Since the first defendant is enjoying the suit property, he cannot turn round and say that the first plaintiff is not the landlord. He is estopped from denying title by the plaintiff, since he entered in to the property as a tenant from present plaintiff, he is estopped from denying the title of the property, since he is a tenant of the suit property and for the reasons stated in the plaint is liable to be evicted.

7.Now, the arguments of the learned counsel for the petitioner is that the property is a Grama Natham, and hence, the present plaintiff is not the owner of the suit property and his submission cannot be considered at this stage.

8.Since the revision petitioner/defendant admitted the title of the first plaintiff, entered into the said agreement and he is a tenant under the plaintiff and he is liable to be evicted as per the tenancy agreement. Hence, the argument of the learned counsel for the petitioner that the plaintiff is not a landlord to the petitioner cannot acceptable. Hence there is no infirmity or illegality in the order of the lower Court, which warrants interference by this Court.

In the result, the civil revision petition is dismissed. No costs. Consequently, the connected C.M.P is also closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To
The Principal Subordinate Judge,
(Wakf Tribunal, Tirunelveli)

+1cc to Mr.D.Sivaraman, Advocate in SR.No.25674
+1cc to Mr.D.Nallathambi, Advocate in SR.No.25692

SDR/DB/SAR I/06.06.2016/3P/4C

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